

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

APR 16 7 37 AM '92

MM Docket No. 92-75

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Boone and Emmetsburg, Iowa) RM-7953

NOTICE OF PROPOSED RULE MAKING

Adopted: April 1, 1992;

Released: April 15, 1992

Comment Date: June 8, 1992

Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Radio Ingstad of Iowa, Inc. ("petitioner"), requesting the substitution of Channel 252C2 for Channel 252C3 at Boone, Iowa, and the modification of Station KIAB(FM)'s license to specify operation on the higher class channel. To accommodate the allotment of Channel 252C2 at Boone, petitioner also requests that Channel 261A be substituted for Channel 252A at Emmetsburg, Iowa, and the license of Station KEMB modified to specify operation on the alternate Class A channel. Petitioner states that it will apply for Channel 252C2, if allotted to Boone. Petitioner also states its intention to reimburse the licensee of Station KEMB for the reasonable costs associated with the station's channel change.

2. Channel 252C2 can be allotted to Boone in compliance with the Commission's minimum distance separation requirements with a site restriction of 31.3 kilometers (19.4 miles) southwest to accommodate petitioner's desired transmitter site. Channel 261A can be allotted to Emmetsburg with a site restriction of 12.1 kilometers (7.5 miles) west.¹ We note that Channel 261A cannot be allotted to Emmetsburg at the coordinates specified in Station KEMB's license. In this connection, it is Commission policy not to force a station to change its transmitter site in order to accommodate a new allotment elsewhere. However, we are proposing this channel change because petitioner has provided a letter from Jacobson Broadcasting Corporation ("Jacobson"), licensee of Station KEMB, attesting to its willingness to change channel and transmit-

ter site.² We also need not issue an *Order to Show Cause* because Jacobson has consented to the channel change. As requested, we propose to modify petitioner's license for Station KIAB(FM) to specify operation on the higher class channel. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 252C2 at Boone or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. We believe the public interest would be served by proposing the substitution of Channel 252C2 for Channel 252C3 at Boone, Iowa, and the substitution of Channel 261A for Channel 252A at Emmetsburg, Iowa, since it could provide Boone with a wide coverage area FM service and enable Station KIAB(FM) to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

		Channel No.	
City	Present	Proposed	
Boone, Iowa	252C3, 257A	252C2, 257A	
Emmetsburg, Iowa	252A		261A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 8, 1992**, and reply comments on or before **June 23, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Clifford M. Harrington, Esq.
Matthew P. Zinn, Esq.
Fisher, Wayland, Cooper and Leader
1255 - 23rd Street, N.W., Suite 800
Washington, D.C. 20037-1125
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of*

¹ The coordinates for Channel 252C2 at Boone are North Latitude 41-49-00 and West Longitude 93-42-00. The coordinates for Channel 261A at Emmetsburg are 43-04-00 and 94-49-00.

² We recognize that Jacobson desires to operate on Channel 261A at its present transmitter site through the use of a directional antenna, if necessary. Further, Jacobson states that it may withdraw its consent to the channel change if, prior to the

conclusion of the rule making, it finds that such operation would not be possible. We wish to make clear that if the channel substitutions proposed herein are adopted, Jacobson will be required to take such steps as are necessary to ensure that Station KEMB operates in compliance with the Commission's minimum distance separation and other technical requirements.

the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.